

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 89 of 2010

Thursday, this the 04th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K. Sasidharan Nair, Accounts Officer,
 LAO (AF), Coimbatore. **Applicant**

(By Advocate – Mr. Vishnu S. Chempazhanthiyil)

V e r s u s

- 1. The Controller of Defence Accounts,
 618, Annasalai, Teynampet, Chennai-18.
- 2. The Controller General of Defence Accounts,
 West Block-V, R.K. Puram,
 New Delhi-110 066. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 13.7.2011, the
 Tribunal on 04-08-11 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

This OA has been filed by the applicant with a prayer to set aside
 Annexure A-14 dated 14.8.2008 by which a penalty of censure was imposed
 on the applicant and Annexure A-16 dated 26.11.2009 by which his appeal
 against the same was rejected.

- 2. The applicant while working as Assistant Accounts Officer under the



respondents was issued with an alert notice for transfer to Thirunelveli by LAO (A), Trivandrum. While giving three choice stations he had opted Thirunelveli as his second choice. Therefore, he was selected for transfer to Thirunelveli. On learning that he was under orders of transfer to Thirunelveli he submitted a representation to CDA, Chennai on 21.4.2007 against transfer to Thirunelveli on medical grounds and for his retention at Trivandrum. When his request was rejected vide CDA, Chennai letter dated 18.5.2007 he approached this Tribunal challenging his transfer. The office communication dated 18.5.2007 was a confidential letter addressed to ACDA in charge, ZO(PD), Trivandrum which was unauthorizedly photo copied by him for production before this Tribunal. Disciplinary action was initiated against the applicant for his misconduct of unauthorized photo copying of official confidential document. The minor penalty of censure was imposed on him vide order dated 14.8.2008 at Annexure A-14. The applicant preferred an appeal dated 20.10.2008 against the order of penalty imposed on him which was rejected by the appellate authority vide order dated 26.11.2009 at Annexure A-16. Hence, the OA.

3. The applicant submitted that he had represented against his transfer to Thirunelveli on medical grounds. His representation was rejected vide order dated 18.5.2007 but he was not served with a copy of the order rejecting his representation. The said communication stated "the AAO may be informed accordingly". It was also marked to the applicant. Since it was an order rejecting his request he was entitled to a copy of the same. In fact there was nothing confidential about the said communication. The charge sheet was

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issued on 23.10.2007 to which he given a reply on 12.11.2007. Due to the inaction to finalize the disciplinary proceedings the applicant was superseded by his juniors for promotion. Prompt action was not taken to ensure that he was denied eligible and due promotion. There is no rule requiring permission from the authorities for producing documents before this Tribunal.

4. The respondents submitted that the unauthorized photo copying of the confidential document for personal use of the applicant was against paragraph 279 of the Office Manual part I (Annexure R-1) which inter alia states that possession by a government servant of any letter to which he is not authorized for personal purpose shall amount to unauthorized communication of the information. The confidential letter dated 18.5.2007 was not the final order regarding transfer of the applicant as is seen from the very fact of the sentence in the said letter that the "relief may be with held till its confirmation is received from the Headquarters office". Thus photo copying of the official confidential letter unauthorizedly rendered the applicant unbecoming of a government servant and lacking absolute integrity and devotion to duty which is violative of Rule 3 of CCS (Conduct) Rules. The applicant has not been punished for approaching this Tribunal by filing OA No. 328 of 2007. The appellate authority after taking into account all the facts pertaining to the above case has issued a speaking order rejecting the applicant's appeal. For the above reasons the OA is premature and devoid of merit and is liable to be dismissed.

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5. In the rejoinder the applicant submitted that the respondents are still going by the rule book framed by the British Raj. The sweeping changes brought about by Right to Information Act has not weighed with the respondents.

6. We have heard the learned counsel for the applicant Mr. Vishnu S. Chempazhanthiyil and learned counsel for the respondents Mr. Sunil Jacob Jose, SCGSC and perused the records.

7. The fact that the applicant had photocopied the letter dated 18.5.2007 (Annexure A-4) addressed to the ACDA in charge, ZO(PD), Trivandrum is not disputed. It was marked confidential. A copy was not marked to him although it dealt with his representation against his transfer to Thirunelveli. The aforesaid letter was marked to him in his capacity as Assistant Accounts Officer. He was the custodian of the said document. As per explanation under paragraph 279 of the Office Manual, Part I, quotation by a government servant of any letter to which he is not authorized to have access for personal purpose shall amount to unauthorized communication of the information. The applicant had unauthorized photo copied a confidential letter which was not sent to him in his personal capacity which amounted to unauthorized communication of the information as per the rule mentioned above. There is nothing illegal if the respondents considered the unauthorized copying of the confidential letter as against the rule and initiated disciplinary action against the applicant. The contention of the applicant that there was nothing confidential about the letter dated 18.5.2007 is not valid. The applicant is not invested with the authority to



decide which confidential letter is to be treated as confidential or otherwise. True, the matter of the letter pertains to a representation made by the applicant. He is entitled to receive a reply from the competent authority in this regard. However, he was informed orally about the rejection of his representation against his transfer to Thirunelveli. If he wanted a copy of the letter he could have very well asked for the same from the competent authority. He could have obtained a copy under the Right to Information Act as well. Instead he unauthorizedly copied the letter violating the relevant rule in this regard. The rule might have been framed in the British Raj but so long as it is in force it is to be respected. Any violation would entail consequences. The respondents have followed the rules and inflicted the punishment of censure on the applicant. The appellate authority has taken into consideration all the facts of the case and submissions made by the applicant and issued a speaking order rejecting his appeal. The departmental action against the applicant for unauthorized copying of a confidential document and the imposition of a penalty of censure against him are within the ambit of the rules and regulations.

8. In our considered view there is no ground for this Tribunal to interfere with the impugned orders. In the result the OA is dismissed with no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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(JUSTICE P.R RAMAN)
JUDICIAL MEMBER